

U.S. COURTS

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REC'D \_\_\_\_\_ FILED \_\_\_\_\_  
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Attorneys for The Amalgamated Sugar Company

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In re:

HIPWELL, TERRY,

Debtor.

Case No. 96-02095

**MOTION FOR ORDER TERMINATING  
STAY, REQUIRING SURRENDER OF  
PROPERTY, AND REINSTATING LIEN  
RIGHTS OR, IN THE ALTERNATIVE,  
FOR ADEQUATE PROTECTION**

**RELIEF SOUGHT**

The Amalgamated Sugar Company (TASCO), by and through its counsel of record, Penland Munther Boardman, Chartered, moves the Court for an Order 1) terminating the stay, 2) requiring Debtor's surrender of personal property (farm equipment/vehicles) and, 3) reinstating TASCO's lien rights possessed prior to confirmation of the Chapter 12 Plan. TASCO provides the following in support of its motion.

According to the Trustee's motion to compel/motion for turnover [Docket No. 127-1], the Chapter 12 Plan confirmed on May 30, 1997, has failed to produce sufficient income during its first year of operation to meet plan requirements. Furthermore, it is evident from the Trustee's recent motion [Docket No. 132-1] that efforts have commenced to dispose of Debtor's real property.

**MOTION FOR ORDER TERMINATING STAY, REQUIRING SURRENDER OF PROPERTY, AND  
REINSTATING LIEN RIGHTS OR, IN THE ALTERNATIVE, FOR ADEQUATE PROTECTION - 1**

<p> amal/hipwell/mot/terminate/stay/rcb.wp(03:198

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TASCO seeks an Order terminating the stay, requiring Debtor to surrender certain farm equipment and vehicles in which TASCO possessed a security interest prior to confirmation of the plan, and reinstating TASCO's lien rights in the property so that TASCO can now exercise its right to sell the property and apply the proceeds to Debtor's obligations to TASCO. TASCO possessed a first position security interest in the following equipment as listed at Tab #1 --  
Creditor Position & Liquidation Analysis of Debtor's Amended Chapter 12 Plan:

- |  |                                     |
|--|-------------------------------------|
| (a) Front Tires and Rims: set of 13.6x28;      | (m) 12 row Milton Planter;          |
| (b) 1980 Ford 8000 w/20' bed & hoist;          | (n) J.D. 900 7 shank ripper;        |
| (c) Tires and Rims: set of 14.9 x 38;          | * (o) 12 row Dammer Diker;          |
| (d) Tires and Rims: 2 sets of 14.9 x 38;       | (p) Pipe trailer;                   |
| * (e) 986 IHC Tractor;                         | (q) 2 sets of ACE Saddle tanks;     |
| (f) Tires: set of 14.9 x 38 duals;             | (r) 24 row band sprayer;            |
| (g) 12 row bedding bar w/markers;              | * (s) IHC 140 Plow;                 |
| (h) Farmall H. Gas Tractor;                    | (t) Air Compressor;                 |
| (i) John Deere 4630 Tractor;                   | (u) Fertilizer Pump;                |
| (j) 1973 GMC C-65 w/bed & hoist;               | (v) 24 row 3 pt. Sprayer;           |
| (k) Land Pride 3 pt. Terrace blade;            | (w) 12 row Cultivator bar w/tools;  |
| * (l) 1976 Ford 750 w/16' bed & hoist (rough); | (x) Fertilizer and Spray Equipment. |

The approximate value of this collateral (at the time of the plan confirmation) is set forth in the Liquidation Analysis. TASCO has not obtained, nor is aware of any current appraisals or valuations. TASCO's security interest in the above-referenced property was perfected by way of UCC-1 filings which are attached to TASCO's original Proof of Claim. Although not contained

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\* Item Nos. (e), (l), (o), and (s) have previously been surrendered to TASCO under the Chapter 12 Plan.

on the Liquidation Analysis, the following additional equipment/vehicles are listed on TASCO's UCC filings:

(x) Woods 14' mower;

(z) 1979 GMC pickup;

(y) 1977 Ford Courier;

(aa) 1973 Ford 8000 w/bed & hoist.

TASCO's claim is in the approximate sum of \$80,000 plus interest and attorney's fees as stated in its Proof of Claim as well as the Amended Chapter 12 Plan confirmed by this Court.

### ARGUMENTS AND AUTHORITIES

11 U.S.C. § 362 provides for termination of the stay as follows:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if--

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization; or . . . .

Because Debtor has failed to fulfill the obligations of his Chapter 12 Plan, TASCO asserts that "cause" under subsection (d)(1) is evidenced in the current circumstances of this case. In short, the prospects for Debtor to salvage his Chapter 12 Plan are nil. Therefore, cause exists for terminating the stay and surrender of the property to TASCO for purposes of realizing proceeds from the sale to be applied against Debtor's obligation.

Furthermore, subsection (d)(2) allows for termination of the stay if the debtor has no equity in the property and the property is not necessary to an effective reorganization. Debtor has no equity in the farm equipment/vehicles as it was pledged in the entirety as collateral for the

operating loans provided by TASCO. Moreover, because there will be no further operation under the defunct Chapter 12 Plan, logically the property is not necessary to an effective reorganization. Both elements of subsection (d)(2) having been satisfied, the § 362 stay should be terminated and the property surrendered to TASCO for sale.

In the alternative, TASCO seeks adequate protection pursuant to § 1205(b)(4). Specifically, TASCO requests adequate protection by way of surrender of the property to TASCO for purposes of maintaining the property and avoiding any further decrease in the value of the property.

DATED this 11th day of March, 1998.

PENLAND MUNTHE BOARDMAN, CHARTERED



Richard C. Boardman, Of the Firm  
Attorneys for The Amalgamated Sugar Company

### CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 11th day of March, 1998, I caused true and correct copies of the foregoing to be forwarded with all required charges prepaid, by the method indicated below, in accordance with the rules of procedure, to the following persons:

Howard R. Foley  
Foley & Freeman, Chartered  
77 East Idaho Street  
P.O. Box 10  
Meridian, ID 83680

Hand Delivery \_\_\_\_\_  
U.S. Mail   X    
Facsimile \_\_\_\_\_  
Overnight Mail \_\_\_\_\_

Office of the U.S. Trustee  
304 North Eighth Street, Ste. 347  
P.O. Box 110  
Boise, ID 83701

Hand Delivery \_\_\_\_\_  
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Facsimile \_\_\_\_\_  
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United States Trustee  
Ronald D. Schoen  
P.O. Box 216  
Payette, ID 83661

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U.S. Mail   X    
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Richard C. Boardman